

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

PEGGY YOUNGER

Plaintiff,

v.

No. _____

BNSF RAILWAY COMPANY

Defendant

Removed from the District Court of
Valencia County, State of New
Mexico, Case No. D-1314-CV-2011-
01191

NOTICE OF REMOVAL

Defendant BNSF Railway Company ("BNSF") hereby files its Notice of Removal of the case *Peggy Younger v. BNSF Railway Company*, Thirteenth Judicial District Court, County of Valencia, State of New Mexico, No. D-1314-CV-2011-01191, pursuant to 28 U.S.C. §§ 1332, 1441(a), and 1446. By removing this case, Defendant BNSF does not waive, and expressly reserves, any and all defenses available to it. The grounds for removal are further stated as follows:

A. The Removed Case.

1. On or about September 21, 2011, Plaintiff, Peggy Younger filed a Complaint in the Thirteenth Judicial District, Valencia County, state of New Mexico, alleging several causes of action for negligence against Defendant BNSF.

2. On September 23, 2011, BNSF was served with the Plaintiff's Complaint filed in the Thirteenth Judicial District, Valencia County, state of New Mexico. Pursuant to 28 U.S.C. § 1446(a) and D.N.M. LR-Civ. 81.1(a), true and correct copies of all process, pleadings and orders served upon BNSF are hereto attached as **Ex. A**. Pursuant to D.N.M. LR-Civ. 81.1,

copies of all records and proceedings from the State Court Action will be filed with the Court within thirty (30) days.

3. Contemporaneously with this Notice of Removal, Defendant BNSF is filing an Answer to Plaintiff's Complaint.

B. Diversity of Citizenship.

4. Plaintiff Peggy Younger is and at all times relevant hereto has been a citizen of the State of New Mexico for purposes of 28 U.S.C. § 1332 diversity of citizenship.

5. Defendant BNSF is a duly organized corporation organized under the laws of the State of Delaware, with its principal place of business in the State of Texas. Accordingly, for the purposes of 28 U.S.C. § 1332, BNSF is a citizen of the States of Delaware and Texas.

6. There is complete diversity of citizenship between Plaintiff and Defendant BNSF.

7. In addition, the amount in controversy exceeds \$75,000, as Plaintiff has asserted a written demand against BNSF for \$1,000,000 in damages allegedly incurred as a result of the events underlying Plaintiff's complaint.

8. Accordingly, this Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332, and the Complaint is properly removed under 28 U.S.C. § 1441.

C. Notice of Removal is Timely.

9. Plaintiff's State Court Complaint was filed on or about September 21, 2011 and Defendant BNSF was served with the Summons and Complaint on or about September 23, 2011. This Notice of Removal is, therefore, timely pursuant to 28 U.S.C. § 1446(b), as it is filed within thirty days of service of the initial State Court Complaint.

D. Proper Notice to the State Court.

10. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal will be

promptly filed with the Clerk of the District Court of the Thirteenth Judicial District, Valencia County, State of New Mexico, and BNSF will serve counsel of record in this action with this Notice of Removal promptly after its filing.

WHEREFORE, Defendant BNSF hereby removes this action, in its entirety, from the District Court in the Thirteenth Judicial District, Valencia County, State of New Mexico, to the United States District Court for the District of New Mexico.

Electronically filed:

ATKINSON, THAL & BAKER, P.C.

/s/ Andrew B. Indahl

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Attorneys for Defendant BNSF Railway Co.

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of October, 2011, I filed the foregoing electronically through the CM/ECF system and a copy of the foregoing was mailed by U.S. Mail to the following counsel of record:

Richard R. Marquez
503 Slate Ave., NW
Albuquerque, NM 87102
Attorney for Plaintiff

/s/ Andrew B. Indahl